

Permitting & Assistance Branch Staff Report
New Solid Waste Facilities Permit for the
Zero Waste to Energy Development Company Anaerobic Digestion Facility
SWIS No. 43-AN-0033
November 18, 2013

Background Information, Analysis, and Findings:

This report was developed in response to the City of San Jose, Department of Planning, Building and Code Enforcement, Local Enforcement Agency's (LEA) request for the Department of Resources Recycling and Recovery (Department) concurrence on the issuance of a proposed new Solid Waste Facilities Permit (SWFP) for the Zero Waste to Energy Development Company Anaerobic Digestion Facility, SWIS No. 43-AN-0033, located in City of San Jose and owned by City of San Jose, Real Estate Division, and operated by Zero Waste to Energy Development Company. A copy of the proposed permit is attached. This report contains Permitting & Assistance Branch staff's analysis, findings, and recommendations.

The proposed permit was received on October 28, 2013. Action must be taken on this permit no later than December 27, 2013. If no action is taken by December 27, 2013, the Department will be deemed to have concurred with the issuance of the proposed new SWFP.

Proposed Permit:

The following are the key design parameters of the proposed project:

	<u>Proposed Permit</u>
Operator	Zero Waste to Energy Development Company
Owner	City of San Jose, Real Estate Division
Facility Type	Composting Facility
Proposed Permitted Hours/Days of Operation	24 Hours per day, 7 days per week, 8 am – 6 pm (7 days per week for material delivery and export)
Proposed Permitted Maximum Tonnage	500 tons per day
Proposed Permitted Traffic Volume	Traffic will be regulated by CCR, T14 Section 17418.3: Traffic flow through the facility shall be controlled to prevent the following: (1) Interference with, or creation of, a safety hazard on adjacent public streets or roads, (2) on-site safety hazards, and (3) interference with operations.
Proposed Permitted Area (acres)	22.45 acres
Design Capacity (cubic yards)	100,000 cubic yards
Proposed Waste Types	Green Material, Yard Trimmings, Wood Waste, Pre and Post Consumer Food Material, Mixed Solid Waste, Compostable Material, Agricultural Materials

Key Issues:

The proposed permit will allow for the following:

1. Operation of a Dry-Fermentation Anaerobic Digestion Facility, which will utilize a proprietary technology to convert organic waste sourced from the City of San Jose and surrounding communities into biogas containing 50-60 percent methane.
2. Accepting and processing (anaerobic composting) of organic waste that consists mainly of food waste, source separated organics, commercial and municipal organic waste. Municipal feedstock materials will be trucked directly to the proposed facility or conveyed from the nearby Zanker Road Resource Recovery Operation and Landfill and/or Zanker Material Processing Facility.
3. The proposed facility will operate continuously 24-hours per day, 7-days per week, 365 days per year. The facility will open to accept inbound materials and transport outbound materials from approximately 8:00 am to 6:00 pm every day.
4. The facility is to operate as a Composting facility.

Background:

The proposed facility is located at 685 Los Esteros Road north of Zanker Road off of State Route 237 in the Alviso area of San Jose. The project site is part of an approximately 96-acre parcel of land that is adjacent to the Zanker Material Processing Facility (ZMPF). Of the 96 total acres, approximately 41 acres is considered the proposed project site. Currently unused, the 96-acre property contains part of the former Nine Par Landfill, a tidal marsh area, and an inactive recycled water filling station and water tank.

The proposed facility will be developed in three phases, with each phase being capable of handling 75,000 tons of incoming organic waste material per year plus 15,000 tons of bulking material and compost amendments for an eventual total of 225,000 tons of organic feedstock and 45,000 tons of bulking agent to be used in the Anaerobic Digestion (AD) process per year. With this application, the operator proposes to process up to 500 tons per day of organic material on a 22.45-acre parcel.

Findings:

Staff recommends concurrence in the issuance of the proposed new SWFP. All of the required submittals and findings required by Title 27 of the California Code of Regulations (27 CCR), Section 21685, have been provided and made. Staff has determined that the California Environmental Quality Act (CEQA) requirements have been met to support concurrence. The findings that are required to be made by the Department when reaching a determination are summarized in the following table. The documents on which staff's findings are based have been provided to the Branch Chief with this Staff Report and are permanently maintained by the Waste Permitting, Compliance, and Mitigation Division.

27 CCR Sections	Findings	
21685(b)(1) LEA Certified Complete and Correct Report of Facility Information	The LEA provided the required certification in their permit submittal letter dated October 22, 2013.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(3) Solid Waste Facility Permit	Staff received a proposed Solid Waste Facilities Permit on October 28, 2013.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685 (b)(4)(A) Consistency with Public Resources Code 50001	The LEA in their permit submittal package received on October 28, 2013, provided a finding that the facility is consistent with PRC 50001. Waste Evaluation & Enforcement Branch (WEEB) staff in the Jurisdiction Product & Compliance Unit found the facility is identified in the Nondisposal Facility Element and with the Countywide Integrated Waste Management Plan, as described in the memorandum dated November 7, 2013.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(9) LEA CEQA Finding	The LEA provided a finding in their permit submittal package received on October 28, 2013, that the proposed permit is consistent with and supported by the existing CEQA documentation. See the Environmental Analysis below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21650(g)(5) Public Notice and/or Meeting, Comments	A Public Informational Meeting was held by the LEA on September 24, 2013. No written comments were received by LEA. Two written comments were received by Department staff. See Public Comments section below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
CEQA Determination to Support Responsible Agency's Findings	The Department is a responsible agency under CEQA with respect to this project. Permitting and Assistance Branch staff has determined that the CEQA record can be used to support the Branch Chief's action on the proposed new SWFP.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable

Compliance History:

Permitting & Assistance Branch staff have determined that the design and operations described in the submitted Report of Composting Site Information (RCSI) will allow the proposed facility to comply with State Minimum Standards.

Environmental Analysis:

Under California Environmental Quality Act (CEQA), the Department must consider, and avoid or substantially lessen where possible, any potentially significant environmental impacts of the proposed SWFP before the Department concurs in it. In this case, the Department is a Responsible Agency under CEQA and must utilize the environmental document prepared by the City of San Jose, Department of Planning, Building and Code Enforcement, acting as Lead

Agency, absent changes in the project or the circumstances under which it will be carried out that justify the preparation of additional environmental documents and absent significant new information about the project, its impacts and the mitigation measures imposed on it.

The operations that will be authorized by the issuance of the proposed permit include: an aerobic digester with feedstock that includes pre and post-consumer food wastes, source separated organics (yard trimmings, green material, agricultural material), and organic residue from other Municipal Solid Waste (MSW) processing facilities. The facility will have a Receiving Hall for tipping, sorting and pre-processing of organic material, and then use three sequential processes to produce energy and market quality compost. These processes are dry-fermentation anaerobic digestion, in-vessel composting and static and aerated static pile curing. The proposed peak daily tonnage of feedstock to be processed at the facility is 500 tons per day. These operations are supported by the following environmental document.

A Mitigated Negative Declaration (MND), State Clearinghouse No. 2011042023, was circulated for a 30 day comment period from April 8, 2011 to May 9, 2011. The project analysis concluded that any physical environmental impacts caused by the project could be mitigated to less than significant levels with the implementation of the mitigation measures included in the Mitigation, Monitoring and Reporting Program. The MND, together with the Mitigation Monitoring Program, was approved by the Lead Agency on December 22, 2011.

The City of San Jose, Department of Planning, Building and Code Enforcement (LEA) has provided a finding that the proposed new SWFP is consistent with and supported by the cited environmental document.

Staff recommends that the Department, acting as a Responsible Agency under CEQA, utilize the MND as prepared by the Lead Agency in that there are no grounds under CEQA for the Department to prepare a subsequent or supplemental environmental document or assume the role of Lead Agency for its consideration of the proposed new SWFP. Department staff has reviewed and considered the CEQA Findings adopted by the Lead Agency. Department staff further recommends the MND, together with the CEQA finding, is adequate for the Branch Chief's environmental evaluation of the proposed project for those project activities which are within the Department's expertise and/or powers, or which are required to be carried out or approved by the Department.

The administrative record for the decision to be made by the Department includes the administrative record before the LEA, the proposed new SWFP and all of its components and supporting documentation, this staff report, the MND adopted by the Lead Agency, and other documents and materials utilized by the Department in reaching its decision on concurrence in, or objection to, the proposed new SWFP. The custodian of the Department's administrative record is Dona Sturgess, Legal Office, Department of Resources Recycling and Recovery, P.O. Box 4025, Sacramento, CA 95812-4025.

Public Comments:

The project document availability, hearings, and associated meetings were noticed consistent with the SWFP requirements. The LEA held a public informational meeting on September 24, 2012, at the San Jose Water Pollution Control Plant located at 700 Los Esteros Road, in the City of San Jose. The LEA and the facility operator were the only members in attendance. No written comments were received by the LEA.

The Director of the Department received an email from a concerned citizen on October 24, 2013. The commenter stated that their major concern was that the City of San Jose was allowing the construction of the Anaerobic Digestion facility on an old closed landfill (Nine Par Landfill) that was considered a toxic dump site, as documented in a "Site Investigation" conducted by Golder and Associates Inc., in 2010. Commenter contends that the "Site Investigation" was excluded from the City's 2011 Environmental Impact Report and the facility is leaching over 21,000 ppm TCE into the groundwater and into the air.

A second comment filed through the California Environmental Protection Agency's on-line Environmental Complaint Form was received on November 5, 2013 from the same commenter regarding the same concerns.

In response to the aforementioned comments, the Department has no statutory or regulatory authority over the complaints received since they affect groundwater and possibly air quality. The Department forwarded the complaints to the LEA, Department of Toxic Substances Control and Regional Water Quality Control Board.

The Department staff provided an opportunity for public comment during the CalRecycle Monthly Public Meeting on November 19, 2013.